

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CRIMINAL CASE NO. 2:04-cr-00093-MR-WCM-1**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN WESLEY BLACKMON, JR.,

Defendant.

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ORDER

THIS MATTER is before the Court on the Defendant's letter, which the Court construes as a motion to reduce or modify sentence [Doc. 434].

The Defendant pleaded guilty to one count of conspiracy to possess with intent to distribute cocaine base. He was sentenced to a term of 200 months' imprisonment on June 17, 2005. [Doc. 167]. The Defendant's sentence was vacated on appeal. [Doc. 232]. On remand, the Defendant was sentenced to a term of 275 months' imprisonment. [Doc. 247]. The Defendant appealed, but his appeal was dismissed. [Doc. 266]. On July 31, 2009, the Defendant's sentence was reduced pursuant to 18 U.S.C. § 3582(c)(2) and Amendment 706 to a term of 221 months' imprisonment. [Doc. 350]. On December 15, 2015, the Defendant's sentence was reduced again, this time pursuant to 18 U.S.C. § 3582(c)(2) and Amendment 780/782

to a term of 188 months' imprisonment. [Doc. 406]. The Defendant now returns to this Court, asking to be released from prison so that he can spend time with his aging mother. [Doc. 434].

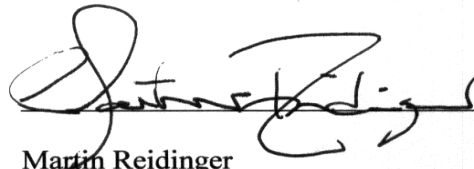
The Court may modify a criminal judgment only in limited circumstances. Pursuant to 18 U.S.C. § 3582(c)(1)(A), as amended by the First Step Act of 2018, Pub. L. No. 115-391, 32 Stat. 5194 (Dec. 21, 2018), the Court may reduce or modify a sentence upon a showing of extraordinary and compelling reasons, but only if the motion is made by the Bureau of Prisons or by the Defendant after having fully exhausted his administrative remedies. Here, there has been no showing that the Defendant has exhausted such administrative remedies prior to filing his motion. Accordingly, his request under § 3582(c)(1)(A) must be denied without prejudice.

The Court may also reduce or modify a sentence pursuant to Rule 35 of the Rules of Criminal Procedure or when a defendant was sentenced to a term of imprisonment based upon a sentencing range that was subsequently lowered by the United States Sentencing Commission. See 18 U.S.C. § 3582(c)(1)(B), (c)(2). These circumstances, however, are not applicable in the present case. Accordingly, the Defendant's motion for a reduction of his sentence under these provisions must be denied.

IT IS, THEREFORE, ORDERED that the Defendant's letter, which the Court construes as a motion to reduce or modify sentence [Doc. 434], is **DENIED WITHOUT PREJUDICE.**

IT IS SO ORDERED.

Signed: February 4, 2019


Martin Reidinger
United States District Judge

